ATTORNEYS FOR APPELLANT:

JON LARAMORE
ANNE K. RICCHIUTO
Baker & Daniels LLP
Indianapolis, Indiana

YASMIN L. STUMP
Indianapolis, Indiana

ANNETTE T. BROGDEN
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

KELLEY YEAGER BALDWIN
Yeager Good & Baldwin
Shelbyville, Indiana

PETER G. DEPREZ
Brown DePrez & Johnson
Shelbyville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MELINA F. STEWART, n/k/a MELINA A. FOX,	)	
Appellant-Petitioner,	)	
vs.	)	No. 69A01-0701-CV-47
THOMAS C. STEWART,	)	
Appellee-Respondent.	)	

APPEAL FROM THE RIPLEY CIRCUIT COURT
The Honorable Carl H. Taul, Judge
Cause No.D-86-142

August 2, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Melina A. Fox, formerly Melina F. Stewart ("Wife"), appeals the trial court's grant of summary judgment in favor of her former husband, Thomas C. Stewart ("Husband"), in Wife's action for contempt, which alleged that Husband had failed to comply with the requirements of a settlement agreement incorporated in the dissolution decree. Wife also appeals the trial court's order on her motion to compel discovery, which, she argues, improperly limited the documents that Husband had to provide during the discovery process. Concluding that there are genuine issues of material fact regarding the settlement agreement and that the trial court improperly restricted discovery, we reverse the trial court's grant of summary judgment in favor of Husband and remand to the trial court for additional discovery and further proceedings.

Facts and Procedural History

Husband and Wife were married in June 1972 and had one child. On May 25, 1989, the trial court entered a dissolution decree ending the almost seventeen-year marriage between Husband and Wife, and this decree incorporated a written Settlement Agreement executed by Husband and Wife that same day. The portion of the Settlement Agreement at issue provided for the disposition of the parties' property, including Stewart Seeds, Inc., as follows:

* * * * *

> WHEREAS, various disputes and unhappy differences have arisen between [Wife] and [Husband] . . . .
>
> WHEREAS, [Wife] and [Husband] have negotiated provisions of an Agreement in order to make amicable settlement of all the issues which may exist between them in and concerning custody, visitation, support, property rights and payment of indebtednesses . . . .

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto do hereby enter into the following agreement:

1. [Wife] shall have set over to her the following described property, to-wit:

* * * * *

d. Personal effects and furnishings, including antique furniture, consisting of [Wife]'s grandparents' three piece mahogany antique set, [Wife]'s grandmother's antique dishes, pig collection and such other personal property in possession of [Husband] as the parties may agree . . . .

* * * * *

3. [Husband] shall have set over to him following described property, to-wit:

* * * * *

b. The real estate of the parties received from the parents of [Husband] by Warranty Deed on December 27, 1984 . . . and more specifically described in Exhibit "B" attached hereto and incorporated herein by reference and by Warranty Deed, dated January 2, 1985 . . . and more specifically described in Exhibit "C" attached hereto and incorporated herein by reference.

c. Any and all interests whether real, personal or mixed, held by the parties, jointly or individually, concerning Stewart Seeds, Inc., Gunn & Stewart Partnership, including but not limited to the real estate and any buildings and dwellings thereon . . . more specifically described in Exhibit "D" . . . Exhibit "E" . . . [and] Exhibit "F" attached hereto and incorporated herein by reference; and TAM Leasing.

* * * * *

4. *In the event of a sale or sales to a non-related party or any transfer to a related party of the collective sum of up to twelve thousand one hundred twenty (12,120) shares of "A" stock and up to the collective sum of ninety thousand (90,000) shares of "B" stock of Stewart Seeds, Inc. held or received by [Husband]* pursuant to this Agreement, *[Husband] agrees to pay [Wife],* if she survives at the time of such sale or transfer, within sixty (60) days of such sale and payment thereon or transfer, *one-half (1/2) of the excess of One Dollar ($1.00) per share of up to the collective sum of up to twelve thousand one hundred twenty (12,120) shares of "A" stock,* less one-half (1/2) of tax consequences and one-half (1/2) of any other ordinary and necessary expenses as used for tax purposes up to and including one-half of twenty-five thousand dollars ($25,000.00) of such expenses *as a result of any such sale or transfer,* AND *one-half (1/2) of the excess of twelve dollars and eighty-eight cents ($12.88) per share to a non-*

> *related party or entity*, less one-half (1/2) of tax consequences on excess of twelve dollars and eighty-eight cents ($12.88) and one-half (1/2) of any other ordinary and necessary expenses as used for tax purposes up to and including one-half of twenty-five thousand dollars ($25,000.00) of such expenses *as a result of any such sale*, OR *six dollars and six cents ($6.06) per share to a related party or entity*, less one-half (1/2) of any tax consequences and one-half (1/2) of any other ordinary and necessary expenses as used for tax purposes up to and including one-half of twenty-five thousand dollars ($25,000.00) of such expenses *as a result of any such transfer*, of up to the collective sum of ninety thousand (90,000) shares of "B" stock, provided however, that any benefit of [Wife] provided in this paragraph is not transferable, not assignable, not subject to any claim of creditors, and no power of appointment exists hereby. In the event [Wife] is not living on the date of any such sale and payment thereon or transfer, any benefit of [Wife] shall inure to the benefit of the parties' minor child, Vanessa Lynn Stewart, if she survives at the time of said sale and payment thereon or transfer, provided however, that any right that Vanessa Lynn Stewart may have hereunder in the event [Wife] does not survive as provided herein, is not transferable, not assignable, not subject to any claim of creditors, and no power of appointment exists hereby. In the event that [Wife] and the parties' minor child, Vanessa Lynn Stewart, do not survive at the time and in the event of any such sales or transfer of Class "A" or "B" stock, subject to the limitations herein provided, then said obligation of [Husband] herein shall lapse, terminate and be forfeited by said beneficiary herein.
>
> * * * * *
>
> 14. . . . It is hereby understood and agreed that this agreement is to be construed strictly as an agreement settling their respective property rights, obligations for payment of indebtednesses, custody, child support and visitation . . . Each party expressly represents that they understand all of the terms and provisions of the within agreement . . . .

Appellant's App. p. 17-21, 24-25 (italicized emphases added; underlined emphases in original).

Stewart Seeds, Inc. ("Stewart Seeds Indiana") was a family business incorporated in Indiana. After Wife transferred her B shares of Stewart Seeds Indiana to Husband, he—along with his cousin, James G. Stewart ("James"), Janet A. Gunn ("Janet"), and Stephen J. Gunn ("Stephen")—were the sole shareholders of Stewart Seeds Indiana.

Sometime around July 2005, Stewart Seeds Indiana and Monsanto Company ("Monsanto") engaged in negotiations regarding Monsanto purchasing certain assets of Stewart Seeds Indiana. As a "condition to the entire transaction," Monsanto requested Stewart Seeds Indiana go through various steps, including an "F Reorganization" under 26 U.S.C.A. § 368.[1] *Id.* at 104, 128. Monsanto provided a "template" and the necessary documents to effectuate the various steps of the transaction. *Id.* at 138.

Thereafter, on August 31, 2005, Husband and the other three shareholders of Stewart Seeds Indiana entered into a "Subscription Agreement" and agreed, in part, to the following:

> 1. Subscription. Subject to the terms and conditions of this Agreement, the undersigned (the "Subscribers") hereby subscribe for and agree to purchase the number and class of shares of common stock (the "Stock") of Stewart Seeds, Inc., a Delaware corporation (the "Company"), set forth opposite each Subscriber's name on Exhibit A,[2] in exchange for that number and class of shares of common stock (the "Exchanged Shares") of Stewart Seeds, Inc. ("Oldco"), an Indiana corporation (the "Purchase Price"). Each Subscriber is delivering to the Company herewith such Subscriber's stock certificate(s) representing all of the Exchanged Shares, duly endorsed to the order of the Company, in satisfaction of the Purchase Price. The Purchase Price has been delivered to the Company in contemplation of and contingent upon (i) all of the stockholders of Oldco contributing their shares to the Company and (ii) the conversion of Oldco into S&G Seeds LLC, an Indiana limited liability company ("S&G LLC"),

[1] As explained in the tax code, an F Reorganization means "a mere change in identity, form, or place of organization of one corporation, however effected[.]" 26 U.S.C.A. § 368(a)(1)(F).

[2] Exhibit A provided that: (1) Husband exchanged 30,000 shares of "Class A common stock" and 90,000 shares of "Class B common stock" in Stewart Seeds Indiana in order to purchase 120,000 shares of "common stock" in Stewart Seeds Delaware; (2) James exchanged 15,000 shares of "Class A common stock" and 45,000 shares of "Class B common stock" in Stewart Seeds Indiana in order to purchase 60,000 shares of "common stock" in Stewart Seeds Delaware; (3) Stephen exchanged 7,500 shares of "Class A common stock" and 22,500 shares of "Class B common stock" in Stewart Seeds Indiana in order to purchase 30,000 shares of "common stock" in Stewart Seeds Delaware; and (4) Janet exchanged 7,500 shares of "Class A common stock" and 22,500 shares of "Class B common stock" in Stewart Seeds Indiana in order to purchase 30,000 shares of "common stock" in Stewart Seeds Delaware. Appellant's App. p. 66.

> with S&G LLC surviving as a wholly-owned subsidiary of the Company ("Conversion"). The parties intend the foregoing transactions to be a reorganization within the meaning of Section 368(a)(1)(F) of the Internal Revenue Code of 1986, as amended.

Id. at 62.

That same day, the steps described in the Subscription Agreement were carried out. First, a Delaware corporation was created—also with the name Stewart Seeds, Inc. ("Stewart Seeds Delaware"). This corporation had the same four shareholders as Stewart Seeds Indiana—Husband, James, Janet, and Stephen. Husband and the other shareholders then "purchase[d]" the same number of shares of stock in Stewart Seeds Delaware as they had in Stewart Seeds Indiana by "exchang[ing]" their Stewart Seeds Indiana shares for the Stewart Seeds Delaware shares. *Id.*; *see also id.* at 110-11.

Next, Stewart Seeds Indiana, which still retained all of its assets, was converted into a "single member" Indiana limited liability company under the name of S&G Seeds, LLC. *Id.* at 115. As a result of this conversion, Stewart Seeds Indiana went out of existence, and the former assets owned by Stewart Seeds Indiana were now part of S&G Seeds, LLC, which was owned by Stewart Seeds Delaware.

Following this LLC conversion, the "assets that Monsanto wanted"—specifically, the sales and marketing assets—were transferred from S&G Seeds, LLC to Stewart Seeds Delaware. *Id.* Then, Stewart Seeds Delaware assigned all of its membership interests in S&G Seeds, LLC to the four shareholders of Stewart Seeds Delaware in proportion to their stock holdings.

Thereafter, the shareholders in Stewart Seeds Delaware sold their stock shares in Stewart Seeds Delaware to American Seeds, Inc. ("American Seeds"), which was a

"Monsanto entity." *Id.* at 117. The "net purchase price" paid by Monsanto to Husband—who owned half of the Stewart Seeds Delaware stock—and the other three shareholders of Stewart Seeds Delaware to purchase the Stewart Seeds Delaware stock was $12.5 million, and this sale of the Stewart Seeds Delaware stock to Monsanto was finalized on September 1, 2005. *Id.* at 133. This $12.5 million amount did not include Monsanto's consulting agreement with Husband, payouts to some minority shareholders, and other transactions costs.[3]

On October 27, 2005, Husband sent Wife a check for $618,847.20 along with the following letter:

> Enclosed please find my personal check in the sum of Six Hundred Eighteen Thousand, Eight Hundred Forty-Seven Dollars and Twenty Cents ($618,847.20), which represents my payment to you as provided in our Decree of Dissolution in paragraph 4 of the Settlement Agreement. I have calculated $6.06 per share is due on 90,000 shares of B Stock and 12,120 shares of A Stock. I have tendered the Subscription Agreement, Stock Certificates and Stock Transfer Ledgers to provide the basis for your attorneys to conclude that this is a transfer to a related party under the decree. Stewarts Seeds, Inc., an Indiana Corporation with A and B Shares were transferred to Stewart Seeds, Inc., a Delaware Corporation with one class of stock, thus I have used the decree provided sum of $6.06/share for not only the 90,000 shares of B Stock, but also the 12,120 shares of A Stock. By the Stock Transfer Ledger previously sent to your attorney, it shows that I did have 30,000 shares of A Stock at the time of the transfer on August 31, 2005, however, the excess was from transfers from my parents in 1994, after our decree.
>
> Although my attorney has advised that only the B Shares are subject to calculation of $6.06 per share times 90,000 shares for a "transfer to a related party" under the decree, and the A Shares of stock should have no such calculation for payment to you, as the A Shares retained the value of $1.00/share, I have elected upon the advise [sic] of my accountant to pay the greater sum due you for a transfer to a related party as provided in the

[3] Husband entered into the consulting agreement with Monsanto on September 1, 2005.

> decree, paragraph 4, because the A and B Shares were converted into one class of shares.
>
> My attorney had requested [your attorney] Annette Brogden to instruct on how you wish your payment to be made to accommodate any planning you may be undertaking, however, we haven't heard from her in that regard.
>
> If you have any questions concerning any matter, please feel free to contact me or through your attorney to my attorney.

Id. at 33.

On November 14, 2005, Wife filed a motion for contempt, arguing that Husband had failed to follow the requirements of paragraph four of the Settlement Agreement contained in the dissolution decree. Specifically, Wife alleged that Husband had "sold his Stewart Seeds stock to American Seeds, Inc. ("ASI"), a holding company formed by Monsanto Company" but "refuses to pay [Wife] the portion of the sale proceeds to which she is legally entitled pursuant to the Decree entered in this case." *Id.* at 11. That same day, Wife also filed a motion to expedite discovery, which the trial court granted.

On January 12, 2006, Wife filed a motion to compel discovery pursuant to Indiana Trial Rule 37(A), alleging that Husband had failed to provide all the documents she had requested in her request for production and that these requested documents were "vital to the determination of the amount to which [Wife] is entitled from [Husband's] sale of his Stewart Seeds stock." *Id.* at 35. Wife alleged that her request for production included a request for "information about business transactions and opportunities upon which [Husband]'s payment to [Wife] for the sale of his Stewart Seeds stock to ASI under the Decree of Dissolution of Marriage should be based" and that "these documents [were] relevant because they contain the very information that forms the basis of [Wife's]

Motion for Order Finding [Husband] in Contempt in this case." *Id.* at 38. Wife asked the trial court to compel Husband to provide the requested discovery because "[t]he information necessary for [Wife] to present evidence on her Motion for Order Finding [Husband] in Contempt is solely controlled by one party in this case, [Husband]" and his "refusal to produce the documents that [Wife] has requested in her Request for Production of Documents completely hamstrings [Wife's] ability to proceed in this case." *Id.*

On January 20, 2006, the trial court held a hearing on Wife's motion to compel. During the hearing, Husband's attorney presented testimony from Paul Lindemann ("Lindemann")—the transactional attorney who represented the "selling shareholders" of Stewart Seeds Indiana in their transaction with Monsanto—regarding the various steps of the Monsanto transaction. *Id.* at 136. Lindemann explained that Monsanto arranged the various steps of the transaction that occurred on August 31 and September 1, 2005, so that Monsanto could obtain certain assets from Stewart Seeds Indiana. Lindemann testified that Stewart Seeds Delaware was a "related party" to Stewart Seeds Indiana "under the tax rules," *see id.* at 138, and summarized the end result of the transaction as follows:

> Well, what Monsanto end[ed] up with in the transaction [wa]s the assets that it wanted to acquire in a corporation it set up in Delaware. And what Stewart Seeds, what the, what the shareholders of Stewart Seeds end[ed] up with is the assets that Monsanto didn't want in a limited liability company in Indiana.

Id. at 118. Husband argued that the trial court should limit Wife's discovery of documents that were relevant to the enforcement of paragraph four of the Settlement

Agreement as applied to the initial transfer of shares from Stewart Seeds Indiana to Stewart Seeds Delaware, including the issue of whether the transaction was a transfer or sale, whether it was to a related or non-related party, the number of shares involved, and the consideration received. Wife argued that the transfer of shares from Stewart Seeds Indiana to Stewart Seeds Delaware was part of the entire transaction of the sale to Monsanto and that the trial court should allow discovery of that transaction so that Wife could find out more about the underlying facts of the transaction and how much Wife was entitled to be paid.

Thereafter, on February 16, 2006, the trial court issued an order partially granting Wife's motion to compel but limiting the documents that Husband had to provide regarding the Monsanto transaction. In its order, the trial court ruled that "[t]he only documents [that were] relevant to the enforcement of paragraph E(4) of the Decree of Dissolution" were "the documents pertaining to the transaction which took place on August 31, 2005 and September 1, 2005 and involving Stewart Seeds Inc. (Indiana) and/or Stewart Seeds Inc. (Delaware) and Monsanto and/or American Seeds, Inc." except for certain documents that were "prohibited from disclosure by Monsanto's enforcement of the Confidentiality Agreement[.]" *Id.* at 78. The trial court determined that, based on Monsanto's enforcement of a confidentiality agreement, Husband was not required to produce the following documents: "(1) Employment Agreement, dated September 1, 2005, by and between Stewart Seeds, Inc. and James G. Stewart; (2) Monsanto Board Resolution 05-27, dated August 2, 2005; and (3) American Seeds, Inc., Action Through

Unanimous Written Consent of the Board of Directors in Lieu of Special Meeting, dated August 3, 2005." *Id.*

In May 2006, Husband filed a motion for summary judgment, in which he acknowledged that the transfer of his A shares and B shares in Stewart Seeds Indiana stock to Stewart Seeds Delaware "was not designed by Husband, nor at Husband's request, but was at the direction of Monsanto, the company which ultimately purchased the stock of Stewart Seeds Delaware" but argued that this transfer of stock in Stewart Seeds Indiana was to the "related entity" of Stewart Seeds Delaware and "triggered the payment due to Wife" under the Settlement Agreement. *Id.* at 81, 83. Wife responded and argued, in part, that Husband was not entitled to summary judgment because there were genuine issues of material fact about whether Husband "transferred" his stock in Stewart Seeds Indiana to a "related party" under the terms of the Settlement Agreement in the dissolution decree because "the facts are capable of supporting conflicting inferences on this issue." *Id.* at 171. Wife contended that "the facts in this case support the inference that the F reorganization of Stewart Seeds was one step in the transaction of the sale of Stewart Seeds to Monsanto's holding company, and that individual step, which was a condition of the sale, should not be isolated from the entire transaction." *Id.* at 175-76.

On November 16, 2006, the trial court held a hearing on Husband's summary judgment motion. During the hearing, Husband argued that the creation of Stewart Seeds Delaware was not a reorganization and that the passing of shares of stock from Stewart Seeds Indiana to Stewart Seeds Delaware was a "transfer to a related party" under the

Settlement Agreement because Stewart Seeds Delaware was owned by the same shareholders that owned Stewart Seeds Indiana and that Husband did not receive any consideration for this transfer of stock. Wife argued that paragraph four of the Settlement Agreement—including the term "transfer to a related party"—was ambiguous and that evidence needed to be presented to the trial court to determine the intent of the parties regarding that paragraph and that the inferences drawn from the facts of this case are in dispute, thereby precluding summary judgment.

Thereafter, the trial court granted summary judgment to Husband and entered an order, which provided, in part:

* * * * *

> 1. On the date the parties' marriage was dissolved, May 25, 1989, Husband owned 12,120 shares of Class "A" stock and 90,000 shares of Class "B" stock of Stewart Seeds, Inc., an Indiana Corporation (hereinafter referred to as "Stewart Seeds Indiana"). The shareholders of Stewart Seeds Indiana were Thomas C. Stewart, Stephen J. Gunn, Janet A. Gunn and James G. Stewart.
>
> 2. On August 31, 2005, a new corporation was created in the State of Delaware under the name of Stewart Seeds, Inc. (hereinafter referred to as "Stewart Seeds Delaware"). The shareholders of Stewart Seeds Indiana were Thomas C. Stewart, Stephen J. Gunn, Janet A. Gunn and James G. Stewart.
>
> 3. Stewart Seeds Delaware was a related entity to Stewart Seeds Indiana.
>
> 4. On August 31, 2005, Husband transferred the shares of stock in Stewart Seeds Indiana, which he owned at the time of the Decree, to Stewart Seeds Delaware, in exchange for the same number of shares in Stewart Seeds Delaware.
>
> 5. This transfer was an even exchange of stock and Husband received no additional consideration for his transfer of his shares of stock in Stewart Seeds Indiana.

6. This transaction was a transfer of Husband's stock in Stewart Seeds Indiana in exchange for stock in Stewart Seeds Delaware, and such transaction was not a sale of Husband's shares of stock in Stewart Seeds Indiana.

7. Husband transferred his 12,120 shares of "A" stock and 90,000 shares of "B" stock in Stewart Seeds Indiana, which shares of stock were the subject of the Decree, to a related entity (Stewart Seeds Delaware), which transfer triggered the payment due to [Wife].

8. The disposition of Husband's shares of stock in Stewart Seeds Indiana was a transfer to a related party and the amount due to Wife, as a result of such transfer, is the amount to be paid upon the transfer to a related party as provided for in said Decree.

9. The Decree provides that Wife is to be paid the sum of $6.06 per share of the "B" stock. Thus, Husband owes to Wife the sum of $545,400.00 ($6.06 multiplied by 90,000).

10. The Decree provides that Wife is to be paid the sum of one-half of any amount in excess of $1.00 per share of "A" stock. Husband received no consideration for the transfer of either his "A" stock or "B" stock, other than a like number of shares of stock in Stewart Seeds Delaware. Thus, Husband did not receive "any amount in excess of $1.00 per share of 'A' stock". Husband owes Wife nothing for the transfer of the "A" stock.

11. There is not any genuine issue as to any material fact in this cause and that Wife is owed the total sum of $545,400.00 as her share of any interest she may have in Husband's share of stock held in Stewart Seeds Indiana at the time of the parties' dissolution.

* * * * *

Id. at 7-8. Wife now appeals the trial court's order granting summary judgment to Husband and the trial court's order on her motion to compel discovery.

Discussion and Decision

I. Summary Judgment

Wife first argues that the trial court erred by granting summary judgment in favor of Husband. In *Gilman v. Hohman*, we explained our standard of review of a trial court's summary judgment order as follows:

> Our standard of review of a summary judgment order is well-settled: summary judgment is appropriate if the "designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Ind. Trial Rule 56(C). Relying on specifically designated evidence, the moving party bears the burden of showing prima facie that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. If the moving party meets these two requirements, the burden shifts to the nonmovant to set forth specifically designated facts showing that there is a genuine issue for trial. A genuine issue of material fact exists where facts concerning an issue which would dispose of the litigation are in dispute or where the undisputed material facts are capable of supporting conflicting inferences on such an issue. Even if the facts are undisputed, summary judgment is inappropriate where the record reveals an incorrect application of the law to the facts.
>
> On appeal, we are bound by the same standard as the trial court, and we consider only those matters which were designated at the summary judgment stage. We liberally construe all designated evidentiary material in the light most favorable to the nonmoving party to determine whether there is a genuine issue of material fact for trial. The party that lost in the trial court has the burden to persuade the appellate court that the trial court erred. Specific findings and conclusions by the trial court are not required, and although they offer valuable insight into the rationale for the judgment and facilitate our review, we are not limited to reviewing the trial court's reasons for granting or denying summary judgment.

725 N.E.2d 425, 428 (Ind. Ct. App. 2000) (case citations omitted), *trans. denied*.

Here, Husband and Wife entered into a marital settlement agreement, which was incorporated into the dissolution decree by the trial court. "Property settlement agreements in dissolution of marriage cases are encouraged," *see Stockton v. Stockton*, 435 N.E.2d 586, 587 (Ind. Ct. App. 1982), and the statute pertaining to such settlement

agreements, Ind. Code § 31-15-2-17,[4] "gives the parties free rein to make such continuing financial arrangements as, in a spirit of amicability and conciliation, they wish." *Gabriel v. Gabriel*, 654 N.E.2d 894, 896 (Ind. Ct. App. 1995) (internal quotations and citation omitted), *trans. denied*.

Settlement agreements crafted upon dissolution of marriage are contractual in nature and become binding on the parties when the dissolution court incorporates that agreement into the dissolution decree. *See Shorter v. Shorter*, 851 N.E.2d 378, 383 (Ind. Ct. App. 2006); *Rodriguez v. Rodriguez*, 818 N.E.2d 993, 996 (Ind. Ct. App. 2004), *trans. denied*. When interpreting these settlement agreements, we apply the general rules applicable to the construction of contracts. *Rodriguez*, 818 N.E.2d at 996. That is, unambiguous terms of the contract must be given their plain and ordinary meaning. *Shorter*, 851 N.E.2d at 383. Clear and unambiguous terms in the contract are deemed conclusive and, when they are present, we will not construe the contract or look to extrinsic evidence but will merely apply the contractual provisions. *Id.* Terms are not ambiguous merely because the parties disagree as to the proper interpretation of those terms. *Id.* Rather, language is ambiguous only if reasonable people could come to

---

[4] Ind. Code § 31-15-2-17 provides, in part:

> (a) To promote the amicable settlements of disputes that have arisen or may arise between the parties to a marriage attendant upon the dissolution of their marriage, the parties may agree in writing to provisions for . . . the disposition of any property owned by either or both of the parties[.]
>
> (b) In an action for dissolution of marriage . . . the terms of the agreement, if approved by the court, shall be incorporated and merged into the decree and the parties shall be ordered to perform the terms[.]
>
> (c) The disposition of property settled by an agreement described in subsection (a) and incorporated and merged into the decree is not subject to subsequent modification by the court, except as the agreement prescribes or the parties subsequently consent.

different conclusions about its meaning. *Singh v. Singh*, 844 N.E.2d 516, 524 (Ind. Ct. App. 2006). When an ambiguity is found, the court "must determine the intent of the parties at the time the contract was made as disclosed by the language used to express their rights and duties." *Id.* (quoting *Niccum v. Niccum*, 734 N.E.2d 637, 639 (Ind. Ct. App. 2000)).

Ambiguity in a contract may be one of two types: patent or latent. *Simon Prop. Group, L.P. v. Michigan Sporting Goods Distrib., Inc.*, 837 N.E.2d 1058, 1070 (Ind. Ct. App. 2005), *trans. denied*. "Patent ambiguity is apparent on the face of the instrument and arises from an inconsistency or inherent uncertainty of language used so that it either conveys no definite meaning or a confused meaning." *Id.* at 1070-71 (quotation and citation omitted). "Latent ambiguity, on the other hand, arises only upon attempting to implement the contract." *Id.* at 1071 (quotation omitted). A patent ambiguity presents a pure question of law, while a latent ambiguity presents a question of fact that requires resolution by the fact finder. *Id.* Extrinsic evidence—that is, "evidence relating to a contract but not appearing on the face of the contract because it comes from other sources, such as statements between the parties or the circumstances surrounding the agreement"—is admissible to explain the meaning of ambiguity. *Id.* at 1071, 1071 n.10; *see also Univ. of S. Ind. Found. v. Baker*, 843 N.E.2d 528, 535 (Ind. 2006) (holding that where an instrument is ambiguous, whether patent or latent, all relevant extrinsic evidence may properly be considered in resolving the ambiguity).

Wife points out that certain terms used in paragraph four of the parties' Settlement Agreement—specifically, "sale," "transfer," "non-related," and "related"—are not

defined and argues that the Settlement Agreement was ambiguous in the context of the multi-step transaction with Monsanto involved in this case. Thus, Wife argues that the Settlement Agreement contains a latent ambiguity—that is, an ambiguity that "arises only upon attempting to implement the contract." *See Simon Prop. Group*, 837 N.E.2d at 1071; *see also* BLACK'S LAW DICTIONARY 80 (7th ed. 1999) (defining "latent ambiguity" as "[a]n ambiguity that does not readily appear in the language of a document, but instead arises from a collateral matter when the document's terms are applied or executed"). Wife contends that the parties' intent in entering into the Settlement Agreement was to protect Husband's family business while allowing Wife "to share in the financial benefits that [Husband] would obtain if he disposed of his shares in the family business he and [Wife] participated in during the[ir] 17-year marriage." Appellant's Br. p. 17. Wife asserts that such intent supports looking at the entire Monsanto transaction—not just the transfer of stock from Stewart Seeds Indiana to Stewart Seeds Delaware—when determining the compensation to which she is entitled under the Settlement Agreement. Wife maintains that the ambiguity that exists should be resolved by allowing extrinsic evidence on the parties' intent. Finally, Wife argues that there are genuine issues of material fact regarding the nature of the entire transaction and conflicting inferences from undisputed material facts that render summary judgment inappropriate.

Husband, on the other hand, argues that the Settlement Agreement was not ambiguous and that the Settlement Agreement supports only looking at the part of the transaction involving the transfer of shares from Stewart Seeds Indiana to Stewart Seeds Delaware and that "nothing in the parties' Settlement Agreement . . . supports this Court

disregarding [Husband's] transfer of his shares in Stewart Seeds Indiana and considering only [Husband's] subsequent sale of his shares in Stewart Seeds Delaware to Monsanto."[5] Appellee's Br. p. 10. Husband also contends that because the compensation should be calculated based upon the transfer of stock from Stewart Seeds Indiana to Stewart Seeds Delaware and because it was an even exchange of stock, Wife should not receive any compensation for his A shares.

In a nutshell, both parties agree that, based on the Monsanto transaction, Wife is entitled to payment from Husband under paragraph four of the Settlement Agreement. The parties, however, dispute the amount of compensation that Wife should receive from Husband under the Settlement Agreement. Wife contends that the Monsanto transaction—in its entirety—constituted a "sale" to a "non-related" party under the Settlement Agreement and that her compensation for the A shares and B shares should be based on the sale price that Monsanto paid to Husband. Husband argues that only part of the transaction—specifically, the transfer of stock from Stewart Seeds Indiana to Stewart Seeds Delaware—should be considered and that such transfer of stock constituted a "transfer" to a "related" party under the Settlement Agreement.

Although differing interpretations of the provision in question do not render it ambiguous, the parties' arguments demonstrate the latent ambiguity encountered in the

[5] Husband also contends that Wife waived any argument regarding that ambiguity of the Settlement Agreement and waived any argument regarding compensation for the A shares of stock because she did not raise such arguments during the summary judgment proceedings before the trial court. We disagree. Wife raised an argument regarding the ambiguity of the Settlement Agreement argued that the agreement should be interpreted differently than Husband suggested and that she should be compensated for the sale of stock to Monsanto based on the entire sale transaction. Thus, we do not conclude that Wife waived such arguments on appeal.

Settlement Agreement as applied to the present circumstances. That ambiguity cannot be resolved without extrinsic evidence to determine the intent of the parties to the agreement. Furthermore, the inferences derived from the designated evidence demonstrate there are genuine issues of material fact regarding the exact nature of the entire Monsanto transaction and what it entailed. Indeed, while Husband asserts that the transfer of stock from Stewart Seeds Indiana to Stewart Seeds Delaware constituted a transfer to a related party that triggered his requirement to pay Wife under the Settlement Agreement, his own designated evidence indicates that the transfer of A shares and B shares of stock from Stewart Seeds Indiana to Stewart Seeds Delaware was part of an F Reorganization—which is defined in the tax code as "a mere change in identity, form, or place of organization of one corporation, however effected[,]" *see* 26 U.S.C.A. § 368(a)(1)(F)—and was merely done at the request of Monsanto, who ultimately purchased the stock from Stewart Seeds Delaware.

Because the Settlement Agreement contains a latent ambiguity and there are genuine issues of material fact, a factual finding of the parties' intent is required and summary judgment was improper. Accordingly, we remand to the trial court for a determination of the parties' intent in light of the entire Settlement Agreement and extrinsic evidence.[6] Additionally, we note that when determining the intent of the parties and applying that intent to the entire Monsanto transaction at issue, the court should look

[6] We note that Wife's contention that the parties' intent when entering the Settlement Agreement included protecting Husband's family business does have some support when looking at the other paragraphs of the Settlement Agreement—specifically, paragraphs 1(d), 3(b), 3(c)—which make provisions for Husband and Wife's family property to be kept in their respective families. *See* Appellant's App. p. 17-19.

beyond the form to the substance of the transaction. Because summary judgment was not appropriate, we reverse the trial court's entry of summary judgment in favor of Husband.

II. Motion to Compel Discovery

Wife next argues that the trial court abused its discretion by partially denying Wife's motion to compel discovery when it limited the documents that Husband had to provide regarding the Monsanto transaction and denied her access to relevant documents that were "necessary for her to fully understand the sale transaction, including its value to [Husband]." Appellant's Br. p. 25.

The trial court has broad discretion when ruling on issues of discovery, and we will reverse a trial court's ruling on discovery matters only where the court has abused that discretion. *Turner v. Boy Scouts of America*, 856 N.E.2d 106, 112 (Ind. Ct. App. 2006). An abuse of discretion occurs when the trial court's decision is against the logic and circumstances of the case and the natural inferences to be drawn therefrom. *Id.* In general, a party may obtain discovery regarding any matter relevant to the subject matter of the case, or which appears reasonably calculated to lead to the discovery of admissible evidence. *Id*. Indeed, Indiana Trial Rule 26(B)(1) provides:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject-matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

"[G]enerally, Indiana's discovery rules were designed to allow a liberal discovery process that would provide parties with information essential to the litigation of the issues and to promote settlement." *Allstate Ins. Co. v. Scroghan*, 851 N.E.2d 317, 323 (Ind. Ct. App. 2006), *reh'g denied*.

Here, Wife sought document production from Husband of corporate, financial, and transactional records of Stewart Seeds Indiana and the other related entities involved in the Monsanto transaction, including purchase/sale agreements, employment agreements, consulting agreements, and minutes of shareholders and board of directors' meetings. Husband responded to Wife's request for production but, for the most part, objected to any request for documents from Stewart Seeds Delaware and S&G Seeds, LLC because he alleged that they did not pertain to the relevant transaction—the transfer of Husband's shares from Stewart Seeds Indiana to Stewart Seeds Delaware—and were not relevant to the issues in the case or reasonably calculated to lead to the discovery of admissible evidence.

Wife then filed a motion to compel discovery, alleging that the documents withheld by Husband were "vital to the determination of the amount to which [Wife] is entitled from [Husband's] sale of his Stewart Seeds stock[,]" Appellant's App. p. 35, and relevant because they contained the very information that formed the basis of her motion for contempt. The trial court held a hearing on Wife's motion to compel and, thereafter, issued an order partially granting Wife's motion to compel but limiting the documents that Husband had to provide regarding the Monsanto transaction. In its order, the trial court ruled that the only documents relevant to the enforcement of paragraph four of the

Settlement Agreement were "the documents pertaining to the transaction which took place on August 31, 2005 and September 1, 2005 and involving Stewart Seeds Inc. (Indiana) and/or Stewart Seeds Inc. (Delaware) and Monsanto and/or American Seeds, Inc." *Id.* at 78. The trial court ruled, however, that Husband did not have to provide certain documents, including an employment agreement, that were covered by a confidentiality agreement with Monsanto.

Wife contends that the trial court "abused its discretion by denying [her] additional document production, including documents (under a protective order if necessary) revealing consulting relationships and other methods by which Monsanto and its affiliate might be providing additional compensation to members of the Stewart family in exchange for the sale of their business" and that these documents were relevant to issues in the case, including the nature and value of the transaction and the amount of compensation due to Wife. Appellant's Br. p. 26. Husband contends that the trial court properly ruled that the only documents relevant to the issue being litigated were the documents pertaining to the initial transaction involving the transfer of Husband's shares of stock from Stewart Seeds Indiana to Stewart Seeds Delaware. However, he acknowledges that the trial court's ruling could be reversed and that Wife should be allowed further discovery if we were to find that the trial court erred by granting summary judgment to Husband based on the interpretation that the Settlement Agreement applied only to the initial transfer of stock. *See* Appellee's Br. p. 18 (stating that the trial court's "discovery ruling can only be reversed if it is shown that the trial court erroneously concluded that the transaction involving the transfer of [Husband's] shares of

stock in Stewart Seeds Indiana to Stewart Seeds Delaware was the only transaction upon which the parties' Settlement Agreement could be applied").

Because we concluded that the trial court erred by granting summary judgment to Husband due to the existence of genuine issues of material fact regarding the Settlement Agreement and the nature of the Monsanto transaction, we also conclude that the trial court's limitation of discovery—to the extent that it limited discovery to the first transaction only—was against the logic and natural inferences to be drawn from the facts of the case. Wife's action for contempt is based upon the allegation that Husband failed to comply with the requirements of the Settlement Agreement incorporated in the dissolution decree when he failed to compensate her for the sale of stock that occurred as a result of the Monsanto transaction. The documents regarding the nature and value of the entire Monsanto transaction would seemingly contain information that is relevant to Wife's case and/or could be reasonably calculated to lead to the discovery of admissible evidence. Therefore, we reverse the trial court's ruling on this issue and remand for additional discovery, with instructions that the trial court determine if a protective order is necessary for any document that may contain confidential information. *See, e.g.*, *Turner*, 856 N.E.2d at 113 (reversing the trial court's discovery ruling because the requested documents were relevant to the plaintiff's case and/or could be reasonably calculated to lead to the discovery of admissible evidence).

In summary, we reverse the trial court's grant of summary judgment to Husband and remand for additional discovery and further proceedings.

Reversed and remanded.

SULLIVAN, SR. J., and ROBB, J., concur.